

Proposals to Reform Fannie Mae and Freddie Mac in the 112th Congress

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Summary

As households and taxpayers, Americans have a large stake in the future of Fannie Mae and Freddie Mac. Homeowners and potential homeowners indirectly depend on Fannie Mae and Freddie Mac, which in recent years backed and guaranteed home loans accounting for nearly half of the outstanding home mortgages in the nation.

Taxpayers have a large investment in Fannie Mae and Freddie Mac. The Department of the Treasury kept the two insolvent companies in business by providing more than \$175 billion in support. Based on past performance, it is not clear how the enterprises will be able to repay Treasury out of future earnings. In addition to the \$175 billion in direct support, Treasury and the Federal Reserve (the Fed) purchased nearly \$1.4 trillion in GSE-issued and guaranteed mortgage-backed securities (MBS).

These two entities are stockholder-owned, congressionally chartered companies that purchase home mortgages, commonly called government-sponsored enterprises (GSEs). In 2008, increasing mortgage delinquencies and the general financial crisis weakened the two enterprises to the point that they agreed to a voluntary takeover by the federal government known as conservatorship.

This report summarizes and analyzes bills introduced in the 112th Congress that seek to enhance the public accountability of the two enterprises. The bills covered are H.R. 31, H.R. 408, H.R. 463, H.R. 1182, H.R. 1221, H.R. 1222, H.R. 1223, H.R. 1224, H.R. 1225, H.R. 1226, H.R. 1227, H.R. 1859, H.R. 2413, H.R. 2425, H.R. 2428, H.R. 2436, H.R. 2439, H.R. 2440, H.R. 2441, H.R. 2462, S. 178, and S. 693. Some seek to reduce the cost to the government, while others seek to change the enterprises' charters if or when they leave conservatorship. None of the above bills introduced proposes government actions to replace the two enterprises.

To date, two bills, H.R. 1859 and H.R. 2413, propose creating a replacement for the two enterprises. H.R. 1859 would authorize the Federal Housing Finance Agency (FHFA) to charter special purpose associations to support the secondary mortgage market by issuing MBS with an explicit federal catastrophic guarantee. The associations would be charged for this guarantee. H.R. 1859 would require FHFA to develop a plan to transition from enterprise support for the secondary mortgage market to support by these new associations.

The second bill, H.R. 2413, would create a government corporation (the Secondary Market Facility for Residential Mortgages) to purchase and to securitize mortgages. Those selling mortgages to the facility would be required to pay guarantee and reinsurance fees for an explicit federal guarantee on the securities.

Because Fannie Mae and Freddie Mac are under conservatorship, Congress has unusual leverage to direct FHFA, which is both their regulator and conservator, to implement policy changes. Currently, FHFA has unusual control in that it both regulates and manages Fannie Mae and Freddie Mac.

This report will be updated as warranted.

Contents

Overview	1
Financial Difficulties	4
Narrowly Focused Proposed Legislation.....	5
Broadly Focused Proposed Legislation	10

Tables

Table 1. Summary and Comparison of GSE Reform Proposals	2
Table 2. Comparison of Portfolio Caps	7
Table A-1. Summary of Legislative Action	14

Appendixes

Appendix. Legislative Action.....	14
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Contacts

Author Information.....	15
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Overview

The 112th Congress is considering legislative proposals to limit the government's present and future risk from Fannie Mae and Freddie Mac. The two entities are government-sponsored enterprises (GSEs)—congressionally chartered, stockholder-owned companies with special legal privileges and special obligations to facilitate the flow of mortgage funds. Their basic business includes purchasing mortgages that have been issued by others, pooling and guaranteeing the mortgages into mortgage-backed securities (MBS), and either selling the MBS to investors or holding the MBS "in portfolio" as an investment. In recent years, Fannie Mae and Freddie Mac together were responsible for nearly half of the nation's outstanding residential mortgage debt.¹

In 2008, the enterprises' capital proved to be inadequate as mortgage defaults and foreclosures increased more than anticipated, and the cost of borrowing to finance their investment portfolios increased. To support the mortgage markets during the financial crisis of 2008-2009 and to keep these enterprises in business, the U.S. Department of the Treasury has purchased more than \$175 billion of special preferred stock.² In addition, Treasury and the Federal Reserve (the Fed) have provided mortgage market support by purchasing nearly \$1.4 trillion in MBS from investors in the open market.

Treasury's purchase of more than \$175 billion in preferred stock is one element in contracts that require the enterprises to pay an annual 10% cash dividend on the Treasury funds.³ Based on their past histories, it is not clear that the enterprises could survive without Treasury's continued support.

Some of the bills that have been introduced are likely to reduce the enterprises'⁴ future size by reducing or eliminating certain advantages conferred by their charters. More specifically, one category of proposed legislation would increase their cost of doing business (e.g., H.R. 1222). It is likely that the increased costs would be passed onto the enterprises' business partners in the form of lower prices for mortgages and higher interest rates to borrowers. This would potentially allow other securitizers to compete more effectively with the enterprises.

A second group of bills would impose new limitations on the types of mortgages that the enterprises can purchase, leaving more of the mortgage market to their competition (e.g., H.R. 1227).

A third category of changes contained in some of the bills would increase regulatory oversight and disclosure (e.g., H.R. 31 and H.R. 1225). The proposed increased capital requirements would be another source of increased costs, but would also reduce risks. New requirements to file with

¹U.S. Federal Housing Finance Agency, *Enterprise Share of Residential Mortgage Debt Outstanding, 1990-2010 (XLS file)*, available at <http://www.fhfa.gov/webfiles/20543/Enterprise%20Share%20of%20Residential%20Mortgage%20Debt%20Outstanding%201990%20-%202010.xls>.

² See CRS Report R40800, *GSEs and the Government's Role in Housing Finance: Issues for the 112th Congress*, by N. Eric Weiss and U.S. Federal Housing Finance Agency, Data as of November 8, 2011 on Treasury and Federal Reserve Purchase Programs for GSE and Mortgage-Related Securities, available at [http://www.fhfa.gov/webfiles/22755/TSYSupport11092011%20\(2\).pdf](http://www.fhfa.gov/webfiles/22755/TSYSupport11092011%20(2).pdf).

³ U.S. Department of Treasury, *Amended and Restated Senior Preferred Stock Purchase Agreement*, September 26, 2008 available at <http://www.treasury.gov/press-center/press-releases/Documents/seniorpreferredstockpurchaseagreementfrea.pdf> and U.S. Department of Treasury, *Amended and Restated Senior Preferred Stock Purchase Agreement*, September 26, 2008 available at <http://www.treasury.gov/press-center/press-releases/Documents/seniorpreferredstockpurchaseagreementfml.pdf>.

⁴ The texts of the bills analyzed refer to Fannie Mae and Freddie Mac as enterprises, to distinguish them from the third housing GSE, the Federal Home Loan Banks. This report will follow this practice.

the Securities and Exchange Commission (SEC) would eliminate a competitive advantage enjoyed by the enterprises and require them to adhere to some of the same rules as their competitors.⁵

A fourth category of legislative proposals would set a deadline for the enterprises to return to stockholder control or to be dissolved; in the event they were to return to stockholder control, the bills would phase out their charters (e.g., two pairs of companion bills H.R. 408/S. 178 and H.R. 1182/S. 693).

A fifth category of legislative proposals would make provisions for replacing the enterprises in the secondary mortgage markets (e.g. H.R. 1859 and H.R. 2413).

Table 1 summarizes and illustrates differences in provisions of the various bills introduced in the 112th Congress.

Table 1. Summary and Comparison of GSE Reform Proposals
(as of July 8, 2011)

Provision	Narrowly Focused Bills	Broadly Focused Bills		
		H.R. 408 and S. 178 (Companion Legislation)	H.R. 1182 and S. 693 (Companion Legislation)	H.R. 1859
Additional reports from FHFA	H.R. 31	Not Included	Not Included	Not Explicitly Included for Enterprises
Subject to FOIA	H.R. 463	Not Included	Not Included	Not Included
Executive and employee compensation restrictions	H.R. 1221	Not Included	Not Included	Not Explicitly Included
Guarantee fee increase	H.R. 1222	Not Included	Included	Not Explicitly Included for Enterprises
Risk retention	H.R. 1223	Not Included	Not Included	Included for Associations
Portfolio reduction	H.R. 1224, five years starting one year after enactment	Included, four years starting one year after leaving conservatorship	Identical to H.R. 1224	Not Explicitly Included for Enterprises
Treasury approval of debt	H.R. 1225	Not Included	Not Included	Not Included
Repeal affordable housing goals	H.R. 1226	Included	Included	Included
New product restrictions	H.R. 1227	Not Included	Not Included	Not Explicitly Included for Enterprises

⁵ A report in 2003 by Treasury, the Office of Federal Housing Enterprise Oversight, and the Securities and Exchange Commission recommended that Fannie Mae, Freddie Mac, and Ginnie Mae should increase their disclosure about MBS, but did not recommend SEC registration of MBS. See Task Force on Mortgage-Backed Securities Disclosure, *Staff Report: Enhancing Disclosure in the Mortgage-Backed Securities Markets*, January 2003, available at <http://www.treasury.gov/resource-center/fin-mkts/Documents/disclosure.pdf>.

Provision	Narrowly Focused Bills	Broadly Focused Bills		
		H.R. 408 and S. 178 (Companion Legislation)	H.R. 1182 and S. 693 (Companion Legislation)	H.R. 1859
Prohibit use of Mortgage Electronic Registration System	H.R. 2425	Not Included	Not Included	Not Included
Limit payment of legal fees	H.R. 2428	Not Included	Not Included	Not Included
Prohibit reduction of dividends paid to Treasury	H.R. 2436	Not Included	Not Included	Not Included
Authorize FHFA to revoke enterprises charters	H.R. 2439	Not Included	Not Included	Not Included
Sell non-mission critical assets	H.R. 2440	Not Included	Not Included	Not Included
Terminate Housing Trust Fund and Capital Magnet Fund	H.R. 2441	Not Included	Not Included	Not Included
Add Treasury-enterprise support contract terms to law	H.R. 2462	Not Included	Not Included	Not Included
Date certain to end conservatorship	Not Included	24-30 months from enactment	24 months from enactment	Not Explicitly Included for Enterprises
Lower conforming loan limit	Not Included	Included	Included	Revised
Prohibit dividend reduction on Treasury preferred stock	Not Included	Not Included	Included	Not Included
Increase minimum capital	Not Included	Included	Included	Not Explicitly Included for Enterprises
Increase borrower minimum downpayment	Not Included	Included	Included	Included for associations
Repeal exemption from state and local taxes	Not Included	Included	Included	Included
Require SEC registration	Not Included	MBS	MBS and subordinated debt	Not Explicitly Included for Enterprises
Recoup value of federal guarantee	Not Included	Included	Not Included	Not Explicitly Included for Enterprises
Charter repeal	Not Included	Included	Included	Included
Authorize mortgage guarantee associations	Not included	Not Included	Not Included	Included

Provision	Narrowly Focused Bills	Broadly Focused Bills		
		H.R. 408 and S. 178 (Companion Legislation)	H.R. 1182 and S. 693 (Companion Legislation)	H.R. 1859
Direct FHFA to develop plan to wind down enterprises	Not included	Not Included	Not Included	Included

Source: CRS with information obtained from the Legislative Information System available at <http://www.congress.gov/>.

Financial Difficulties

The enterprises came to their current financial difficulties following a period of increasing losses due to mortgage delinquencies, coupled with inadequate capital. In September 2008, Fannie Mae and Freddie Mac separately agreed to enter voluntary conservatorship, which entailed giving their regulator, the Federal Housing Finance Agency (FHFA), management and control of the enterprises. At the same time, the Treasury signed separate contracts with Fannie Mae and Freddie Mac to provide whatever financial support might be needed to keep them solvent.⁶

Homeowners and potential homeowners indirectly depend on Fannie Mae and Freddie Mac as a source of mortgage money. The enterprises are prohibited from making loans directly to borrowers; instead, they purchase mortgages that lenders have already made. They package the mortgages into MBS and either keep them “in portfolio” or sell them to institutional investors. Sometimes the originator “swaps” the mortgages for an MBS backed by the same loans. The advantage of a swap is the addition of the enterprise’s guarantee that the loans will be repaid. Fannie Mae and Freddie Mac back almost half of the home mortgages in the nation.⁷

The Obama Administration’s report on the future of the enterprises and the housing finance system presents three broad alternatives:⁸

- a privatized system with existing government mortgage programs (Federal Housing Authority, Veterans Affairs, and U.S. Department of Agriculture) more narrowly targeted toward groups based on income or first-time homebuyer status;
- a privatized system with a government guarantee only during a crisis; and
- a privatized system with backup government reinsurance of private mortgage insurance.

As of this writing, no legislation has been introduced to implement any of the Administration’s proposals; therefore, they are not discussed further in this report. If and when legislation is introduced, it will be incorporated into this report. More detail on the proposals is contained in

⁶ CRS Report RL34661, *Fannie Mae’s and Freddie Mac’s Financial Problems*, by N. Eric Weiss provides more details on the enterprises’ financial problems.

⁷ U.S. Federal Housing Finance Agencies, *Enterprise Share of Residential Mortgage Debt Outstanding, 1990-2010*, available at <http://www.fhfa.gov/webfiles/20543/Enterprise%20Share%20of%20Residential%20Mortgage%20Debt%20Outstanding%201990%20-%202010.xls>.

⁸ U.S. Department of the Treasury and Department of Housing and Urban Development, “Reforming America’s Housing Finance Market: A Report to Congress,” February 2011, p. 12, available at <http://www.treasury.gov/initiatives/Documents/Reforming%20America's%20Housing%20Finance%20Market.pdf>.

CRS Report R41719, *The Obama Administration's Report on "Reforming America's Housing Finance Market": Implications for Fannie Mae and Freddie Mac*, by Mark Jickling.

This report continues with summaries of legislation that has been introduced in the 112th Congress. Most of the bills address individual areas of concern, such as executive compensation, but two pairs of companion bills would reform a number of areas.

Narrowly Focused Proposed Legislation

This section analyzes legislation that has been introduced and that would make changes to a single area of the enterprises' operations.

H.R. 31, Fannie Mae and Freddie Mac Accountability and Transparency for Taxpayers Act of 2011, would require the director of FHFA to make quarterly reports on Fannie Mae and Freddie Mac in 12 specific areas:

1. total liabilities and the risk to the federal government;
2. executive compensation and bonuses;
3. the impact of reducing the conforming loan limits at the end of FY2011;
4. foreclosure mitigation efforts;
5. mortgage fraud prevention efforts;
6. communications with the Federal Reserve and Treasury regarding the purchase or sale of enterprise securities;
7. enterprise investments outside of their mission;
8. reasons for equity (preferred stock) investments by Treasury;
9. capital levels, portfolio size and their impacts on the safety and soundness of the enterprises;
10. underwriting standards;
11. mortgage buyback policies; and
12. the enterprises' actions that affected enterprise securities, in particular, preferred stock issued before September 6, 2008.

The director could include additional information that he "considers relevant or important with respect to the enterprise, and the activities and condition of the enterprise." The FHFA inspector general (IG) would be required to review the reports and inform Congress of his findings. The bill would require both the reports and the IG's comments to be posted on the FHFA website.

The bill would also require the IG to examine FHFA's loss mitigation policies, including the impact of principal reduction on the enterprises' financial condition and the nationwide foreclosure rate.

There is some overlap between these reporting requirements and current reports. For example, the FHFA's quarterly *Report on the Enterprises' Financial Performance* covers capital, investments, and loss mitigation activities.⁹ The FHFA's monthly *Foreclosure Prevention and Refinance Report* also covers loss mitigation efforts. FHFA has issued a report on the effect of reducing the conforming loan limit.¹⁰

⁹ FHFA publishes most of its reports at <http://www.fhfa.gov/Default.aspx?Page=172>.

¹⁰ See U.S. Federal Housing Finance Agency, *Mortgage Market Note: Possible Declines in Conforming Loan Limit*,

On April 5 and 6, 2011, the House Subcommittee on Capital Markets and Government-Sponsored Enterprises of the Committee on Financial Services marked up H.R. 31 and forwarded it to the full committee.

Even without this legislation, FHFA could send such quarterly reports to Congress, and the IG could review the reports. The bill indicates to FHFA and the FHFA IG that Congress attaches particular importance to these areas of oversight.

H.R. 463, Fannie Mae and Freddie Mac Transparency Act of 2011, would make the enterprises subject to Freedom of Information Act (FOIA) requests by making them federal agencies for the purpose of FOIA compliance. No action has been taken on H.R. 463.

H.R. 1221, Equity in Government Compensation Act of 2011, would limit the pay of the enterprises' employees. Current executive compensation packages, previously approved by FHFA, would be suspended and declared to be the sense of Congress that any pay in 2010 exceeding Level I of the Executive Schedule (\$199,700)¹¹ or the Senior Executive Service (\$179,700)¹² should be turned over to the Treasury. Other employees of the enterprises would be paid according to the federal government's general schedule (GS), with a maximum pay in the Washington, DC, area in 2011 of \$155,500.¹³ Executive compensation would be based in part on the enterprise's profitability. The enterprises would be covered by Troubled Asset Relief Program (TARP) provisions on executive compensation and corporate governance.¹⁴ The bill states that enterprise employees shall not be considered federal employees.

On November 15, 2011, the House Financial Services Committee ordered the bill to be reported as amended.

As conservator, FHFA currently has the authority to reject enterprise salaries without this legislation, but this bill would remove FHFA's discretion. As regulator, 12 U.S.C. 4518 authorizes FHFA to prohibit and order an enterprise to withhold executive compensation that is "not reasonable and comparable" to that provided by similar companies. The same section prohibits FHFA from actually setting salaries or salary ranges.

H.R. 1222, GSE Subsidy Elimination Act of 2011, would require the enterprises to charge a guarantee fee that reflects the risk of the mortgages purchased and the cost of capital that a totally private company would charge. FHFA would have the option to either phase in the higher fee over two years or to impose it at the higher level two years after enactment.

On April 5 and 6, 2011, the House Subcommittee on Capital Markets and Government-Sponsored Enterprises of the Committee on Financial Services marked up H.R. 1222 and forwarded it to the full committee.

As conservator or receiver, FHFA has the authority to implement these provisions. As regulator, it appears that FHFA could not require guarantee fees consistent with the provisions of H.R. 1222 unless necessary for the safety and soundness of the enterprises.

Mortgage Market Note 11-1, March 29, 2011, available at http://www.fhfa.gov/webfiles/20671/MMNote_2011-01_LoanLimit.pdf. Presumably the changes proposed in this bill would be greater.

¹¹ U.S. Office of Personnel Management, *Salaries and Wages: Salary Table No. 2010-EX*, available at <http://www.opm.gov/oca/10tables/html/ex.asp>.

¹² U.S. Office of Personnel Management, *Salaries and Wages: Salary Table 2011-ES*, available at <http://www.opm.gov/oca/11tables/pdf/es.pdf>.

¹³ U.S. Office of Personnel Management, *Salaries and Wages: Salary Table 2011-DCB*, available at <http://www.opm.gov/oca/11tables/html/dcb.asp>.

¹⁴ For implementation details see 31 C.F.R. 30.0-31 C.F.R. 30.17.

H.R. 1223, GSE Credit Risk Equitable Treatment Act of 2011, would prohibit treating mortgage-backed securities issued by the enterprises differently from similar MBS issued by an otherwise identical company. The bill would require that regulatory determinations as to what is a mortgage with a low risk of default, called a “qualified residential mortgage” (QRM) in the Dodd-Frank Wall Street Reform and Consumer Protection Act, “Dodd-Frank,” (P.L. 111-203, 124 Stat. 1376 et seq.), not be based solely on the enterprises’ role in the securitization.

Dodd-Frank requires the federal banking regulators, the SEC, the Department of Housing and Urban Development (HUD), and FHFA to issue joint regulations to implement the act’s risk retention requirements for mortgages included in MBS. Under Dodd-Frank, QRMs would be exempt from this risk retention requirement.

On April 5 and 6, 2011, the House Subcommittee on Capital Markets and Government-Sponsored Enterprises of the Committee on Financial Services marked up H.R. 1223 and forwarded it to the full committee.

Scott G. Alvarez, the Federal Reserve’s general counsel, has testified that Dodd-Frank does not exempt the enterprises from the risk retention requirement, and that their 100% guarantee of timely payment of principal and interest on their MBS is “generally in the form of an unfunded guarantee, which would not satisfy the risk retention requirements of the proposed rules.”¹⁵ Nevertheless, he said that the proposed rules would allow the enterprises’ guarantees to satisfy the risk retention requirements as long as the enterprises were in conservatorship or receivership.

H.R. 1224, GSE Portfolio Risk Reduction Act of 2011, would require the enterprises to accelerate the reduction of their portfolios over five years to \$250 billion each. At the end of 2010, Fannie Mae’s portfolio was \$789 billion and Freddie Mac’s was \$697 billion.¹⁶ The financial support agreements between Treasury and the GSEs require the GSEs to reduce their mortgage portfolios to stay within a cap that started at \$900 billion at the end of 2009 and decreases 10% annually reaching \$250 billion in 2022. The companion bills H.R. 1182 and S. 693 would reduce the enterprises’ portfolios on the same five-year schedule as H.R. 1224. The companion bills H.R. 408 and S. 178 would reduce the portfolios over four years. **Table 2** compares the portfolio caps under the current agreement, H.R. 1224, and the pairs of companion bills.

Table 2. Comparison of Portfolio Caps
(billions of dollars)

Year Ending December 31	Treasury-Enterprise Contracts	H.R. 1224, and H.R. 1182/S. 693 Assuming Enactment in 2011	H.R. 408/S. 178 Assuming Enactment in 2011 and Leaving Conservatorship in 2013
2009	\$900		
2010	\$810		
2011	\$729		

¹⁵ U.S. Congress, House Committee on Financial Services, Subcommittee on Capital Markets and Government-Sponsored Enterprises, Testimony of Scott G. Alvarez, General Counsel of the Board of Governors of the Federal Reserve, “Statement,” *Hearing on Understanding the Implications and Consequences of the Proposed Rule on Risk Retention*, April 14, 2011, available at <http://financialservices.house.gov/media/pdf/041411alvarez.pdf>.

¹⁶ Fannie Mae, *Monthly Summary*, <http://www.fanniemae.com/ir/pdf/monthly/2010/123110.pdf>; Freddie Mac, *Monthly Volume Summary*, available at <http://www.freddie.mac.com/investors/volsum/pdf/1210mvs.pdf>.

Year Ending December 31	Treasury- Enterprise Contracts	H.R. 1224, and H.R. 1182/S. 693 Assuming Enactment in 2011	H.R. 408/S. 178 Assuming Enactment in 2011 and Leaving Conservatorship in 2013
2012	\$656	\$700	
2013	\$590	\$600	
2014	\$531	\$475	\$850
2015	\$478	\$350	\$700
2016	\$430	\$250	\$500
2017	\$387	\$250	\$250
2018	\$349	\$250	\$250
2019	\$314	\$250	\$250
2020	\$282	\$250	\$250
2021	\$254	\$250	\$250
2022	\$250	\$250	\$250

Source: CRS calculations based on U.S. Federal Housing Finance Agency, *Mortgage Market Note: U.S. Treasury Support for Fannie Mae and Freddie Mac*, Mortgage Market Note 10-1, January 10, 2010, http://www.fhfa.gov/webfiles/15362/MMNote_10-1_revision_of_MMN_09-1A_01192010r.pdf and H.R. 1224.

Note: H.R. 1224 excludes unknown amounts that Fannie Mae and Freddie Mac are required by contract to repurchase from investors (mainly nonperforming mortgages).

H.R. 1224 would not count delinquent mortgages that were repurchased to fulfill an enterprise's guarantee against the portfolio limits.

On April 5 and 6, 2011, the House Subcommittee on Capital Markets and Government-Sponsored Enterprises of the Committee on Financial Services marked up H.R. 1224 and forwarded it to the full committee.

As regulator, FHFA could order the enterprises to reduce their risk by reducing their portfolios more rapidly than the current contract provides.

H.R. 1225, GSE Debt Issuance Approval Act of 2011, would require the enterprises to request in writing permission from the Secretary of the Treasury to issue new debt. The Secretary would announce his decision and reasons in writing to the enterprise, FHFA, and Congress. There would be a seven-day waiting period following Treasury's approval before the enterprise could issue the debt.

On April 5 and 6, 2011, the House Subcommittee on Capital Markets and Government-Sponsored Enterprises of the Committee on Financial Services marked up H.R. 1225 and forwarded it to the full committee.

Fannie Mae's and Freddie Mac's charters currently provide the Secretary of the Treasury this authority. According to FHFA staff, it was used in the past to prevent the enterprises from issuing large amounts of debt too close to Treasury debt sales, but this practice fell into disuse. Former

Assistant Secretary of the Treasury Emil Henry has written that there was a more formal process until the mid-1990s.¹⁷

Arguably, the Secretary of the Treasury could assert the existing review authority contained in the enterprises' charters.¹⁸ The requirements that the enterprises make the requests for approval in writing, that the secretary publish his decision, and that there be a seven-day waiting period would formalize the process.

H.R. 1226, GSE Mission Improvement Act, would repeal the affordable housing goals first established by the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (P.L. 102-550, 106 Stat. 3672 et seq.) and amended by the Housing and Economic Recovery Act of 2008 (P.L. 110-289, 122 Stat. 2654 et seq.). It would repeal, also, the duty to serve underserved markets, and funding for both the housing trust fund and the capital magnet fund.

FHFA would have six months to submit a report to Congress on this bill's effect on multifamily properties, loans to low-income borrowers, and loans to borrowers in rural areas. The report would contain recommendations on increasing mortgage credit in these areas.

On April 5 and 6, 2011, the House Subcommittee on Capital Markets and Government-Sponsored Enterprises of the Committee on Financial Services marked up H.R. 1226 and forwarded it to the full committee.

Unless the housing goals are repealed, the enterprises will continue to be required to meet them.¹⁹

H.R. 1227, GSE Risk and Activities Limitation Act of 2011, would prohibit FHFA from approving any new products while an enterprise is in conservatorship or receivership unless FHFA determined the new products were necessary to preserve the enterprises' assets or reduce losses. When the enterprises are not in conservatorship or receivership, the FHFA would retain its existing new product approval authority.

On April 5 and 6, 2011, the House Subcommittee on Capital Markets and Government-Sponsored Enterprises of the Committee on Financial Services marked up H.R. 1227 and forwarded it to the full committee.

Arguably, FHFA could announce a new policy that would restrict new product approvals while the GSEs are in conservatorship.

H.R. 2425, Transparency and Security in Mortgage Registration Act of 2011, would prohibit Fannie Mae, Freddie Mac, and Ginnie Mae from purchasing or securitizing a mortgage that is registered with the Mortgage Electronic Registration System (MERS). MERS is a centralized mortgage registration system that bypasses state laws requiring local registration of mortgages and other liens on real estate. MERS is involved in legal challenges questioning its authority to participate in foreclosures and its ability to maintain a clear history of ownership of real estate.

Some of the employment contracts between the enterprises and employees and former employees provide that the appropriate enterprise shall pay legal expenses incurred as a result of the employment. **H.R. 2428, GSE Legal Fee Reduction Act of 2011**, would require the enterprises to propose to FHFA a methodology to determine "reasonable" legal expenses of an employee or

¹⁷ Emil W. Henry Jr., "How to Shut down Fannie and Freddie," *Wall Street Journal*, December 3, 2010, available at <http://online.wsj.com/article/SB10001424052748704635704575604570042260954.html>.

¹⁸ Fannie Mae, 12 U.S.C. 1717a; Freddie Mac, 12 U.S.C. 1455(j)(1).

¹⁹ U.S. Federal Housing Finance Agency, "2010–2011 Enterprise Housing Goals; Enterprise Book-entry Procedures," 75 Federal Register 55892–55939, September 14, 2010.

former employee. Under HERA the conservator, FHFA, can repudiate any contracts (including employment contracts) entered into prior to the conservatorship.

H.R. 2436, Fannie Mae and Freddie Mac Taxpayer Payback Act of 2011, would prevent a reduction in the annual dividend rates of 10% in cash or 12% in preferred stock paid by the enterprises to Treasury.

H.R. 2439, Removing GSEs Charters During Receivership Act of 2011, would empower FHFA to revoke an enterprise's charter and requires the charter to be revoked at the termination of a limited-life entity created as part of the receivership process.

Presently only Congress can terminate an enterprise's charter.

H.R. 2441, Housing Trust Fund Elimination Act of 2011, would terminate the Housing Trust Fund, the Capital Magnet Fund, and the Hope Reserve Fund, which were established by the Housing and Economic Recovery Act of 2008 (P.L. 110-289) and were to be funded by the enterprises. The enterprises financial conditions precluded any contributions, but \$80 million was appropriated in the FY2010 budget for the Capital Magnet Fund.

H.R. 2440, Market Transparency and Taxpayer Protection Act of 2011, would direct FHFA to identify non-mission critical assets held by the enterprises. Patents and mortgage data are specifically identified as possibly non-mission critical assets. FHFA would submit to Congress a plan to sell these assets. It would, also, require Fannie Mae and Freddie Mac to release loan and appraisal data in a manner that would not disclose personally identifiable information.

H.R. 2462, Cap the GSE Bailout Act of 2011, would set in statute the maximum amount of support that Treasury has contracted to provide each enterprise in the Preferred Stock Purchase Agreements (PSPA), although an amendment to this bill would allow the director of FHFA to supply additional financial support if the private secondary mortgage market were not viable. To keep each of the enterprises solvent, Treasury has contracted to purchase preferred stock subject to certain limits. Initially, the limit was \$100 billion for each GSE, but this amount was raised to \$200 billion each. In late 2009, the PSPA were amended to provide for unlimited support in calendar years 2010 through 2012. Outside of 2010-2012, the \$200 billion limits apply.²⁰ For more information of the enterprises' financial condition, see CRS Report RL34661, *Fannie Mae's and Freddie Mac's Financial Problems*, by N. Eric Weiss.

Broadly Focused Proposed Legislation

Two pairs of broader companion bills have been introduced in the 112th Congress. The first pair is Title VI of H.R. 408 and Title VI of S. 178; the second pair is H.R. 1182 and S. 693. The two sets of companion legislation have some different provisions pertaining to the enterprises and include some, but not all, of the provisions of H.R. 1221 through H.R. 1227. In addition, H.R. 1859 and H.R. 2413 would replace the enterprises.

H.R. 408 and S. 178, both titled the Spending Reduction Act of 2011, are identical and address many other issues besides reforming Fannie Mae and Freddie Mac. These unrelated concerns are not addressed in this report. Title VI, the GSE Bailout Elimination and Taxpayer Protection Act, of these two bills would terminate the enterprises' conservatorships in 24 months (or six months later if FHFA determines that financial markets would be adversely affected by the termination and so notifies Congress).

²⁰ At the end of 2012, the \$200 billion limits will be reduced by any surplus that an enterprise might have.

At the end of the conservatorship, the enterprises would either go into receivership and be dissolved or would continue under revised charters. These revisions would impose the following changes:

- Starting one year after leaving conservatorship, the enterprises would have to reduce their portfolios to \$250 billion each over four years; H.R. 1224 provides for five years, starting one year after enactment. (Section 604(2))
- The enterprises would no longer have housing goals (including the housing trust fund and the magnet fund contributions). This is similar to H.R. 1226. (Section 604(1))

Certain provisions in H.R. 408 and S. 178 are not included in the more narrowly focused bills:

- The enterprises would leave conservatorship 24-30 months after enactment. They would either be returned to stockholder control or be dissolved under receivership. (Section 603)
- Three years after the enterprises return to stockholder control, their charters would be repealed as applied to new business. There would be a 10-year wind-down period followed by their dissolution, which would make provisions for continued payment of each enterprise's financial obligations such as debts and MBS. (Section 606)
- FHFA would have strengthened authority to set and to enforce minimum capital levels. (Section 604(3))
- The conforming loan limit would be set at \$417,000 nationwide with no high-cost exceptions and the enterprises could not purchase homes selling for more than the area median home price.²¹ The conforming loan limit would only increase in future years to reflect increasing house prices. The conforming loan limit is currently \$417,000, except in high-cost areas where the limit is higher with a maximum of \$625,500. (Section 604(4))
- The enterprises would be prohibited from purchasing mortgages greater than the area median home price. (Section 604(4)(F))
- The minimum downpayment for mortgages purchased by the enterprises would be 5% during the 12 months after leaving conservatorship, 7.5% during the second 12 months and 10% afterward. Currently, the required downpayment is flexible as part of the mortgage underwriting process and may affect the interest rate paid by the borrower. (Section 604(5))
- The enterprises would be required to pay all state and local taxes. Currently, they pay only state and local property taxes. (Section 604(6))
- The enterprises would be required to register all stocks and public offerings with the Securities and Exchange Commission (SEC). (Section 604(7))
- FHFA would charge each enterprise for the value of the benefits provided by the government. (Section 604(8))

²¹ FHFA analyzed the impact of reducing the high-cost area conforming limit from \$729,750 to \$625,500. See U.S. Federal Housing Finance Agency, *Mortgage Market Note: Possible Declines in Conforming Loan Limit*, Mortgage Market Note 11-1, March 29, 2011, available at http://www.fhfa.gov/webfiles/20671/MMNote_2011-01_LoanLimit.pdf. Presumably the changes proposed in this bill would be greater. See, also, CRS Report RS22172, *The Conforming Loan Limit*, by N. Eric Weiss and Mark Jickling.

The other pair of companion bills (H.R. 1182 and S. 693) contains all the provisions of H.R. 408 and S. 178 (except for the recovery of the value of the federal guarantee), and has two additional provisions. More specifically, compared with H.R. 408 and S. 178, H.R. 1182 and S. 693 would

- add the guarantee fee increase also contained in H.R. 1222 (Section 4(a)(4));
- require the enterprises to reduce their portfolios to \$250 billion each over five years like H.R. 1224, but unlike the four years in H.R. 408 and S. 178 (Section 4(a)(2)); and
- repeal the affordable housing goals like H.R. 1226 and the other pair of companion bills (Section 4(a)(1)).

Provisions in H.R. 1182 and S. 693 not contained in any of the narrowly focused bills but contained in H.R. 408 and S. 178 would

- end the enterprises' conservatorship in 24 months (without the option for FHFA to grant a six month extension) (Section 3);
- start the phase-out the enterprises' charters as pertains to new business three years after they leave conservatorship (Section 5);
- repeal the enterprises' exemption from SEC registration as pertains to MBS and subordinated debt (Section 4(b)(4));
- lower the conforming loan limit to \$417,000, eliminate the high-cost areas limit, and increase in future years to reflect increasing house prices (Section 4(a)(3));
- direct FHFA to increase the minimum capital required of the enterprises (Section 4(b)(1));
- increase borrower downpayment requirements (Section 4(b)(2)); and
- require the enterprises to pay all state and local taxes (Section 4(b)(3)).

In addition, H.R. 1182 and S. 693 would prohibit a reduction in the 10% annual cash dividend paid to Treasury under terms of the support contracts with the enterprises (Section 4(a)(5)).

H.R. 1859, Housing Finance Reform Act of 2011, would authorize FHFA to charter housing finance guaranty associations to pool and to securitize single-family and multifamily mortgages (Section 3).²² The associations would guarantee the timely payment of principal and interest to investors, and the federal government would provide (and charge for) a backup guarantee. The associations would be restricted to purchasing and securitizing existing mortgages, and they could specialize in particular markets such as community banks and multifamily mortgages.

The maximum mortgage size would be the greater of 150% of the national average home price or 150% of the area median price. Using the National Association of Realtor's median single-family house sales data, the nationwide mortgage limit would be \$256,000 compared to \$417,000 presently.²³ The highest area limits would be Honolulu at \$897,300 (currently \$721,050) and San Jose at \$886,500 (currently, \$625,500).

Mortgages on one-to-four family dwelling units (usually called single family), could be purchased only if the loan-to-value ratio is 80% or less, unless the seller retains a 10%

²² The sections in H.R. 1859 are relatively large: Section 1 is the short title, and Section 2 defines certain terms. Section 3 creates the new guaranty association, Section 4 directs FHFA to wind down the enterprises. Section 5 contains technical and conforming amendments.

²³ National Association of Realtors, *Metropolitan Median Prices*, available at <http://www.realtor.org/research/research/metroprice>.

participation, the seller agrees to repurchase the mortgages in default according to terms approved by FHFA, or the unpaid principal balance in excess of 80% is guaranteed.

FHFA would regulate the associations and could place them into conservatorship or receivership.

FHFA would create a plan to wind down the enterprises as the associations were chartered (Section 4). During the transition, the enterprises would not have affordable housing goals and would be required to pay state and local taxes. Currently, the only state and local taxes that they pay are property taxes.

H.R. 2413, Secondary Market Facility for Residential Mortgages Act of 2011, would create a federal corporation to purchase and securitize mortgages that meet certain underwriting standards. The facility would be prohibited from originating mortgages and would charge a guarantee fee and a reinsurance fee for purchasing mortgages. The fees would be adjusted to keep the facility's market share under 50%, except in unusual circumstances. The goal of the guarantee fee would be to cover the payment of mortgages during normal times. The reinsurance fee would compensate Treasury for the backup federal guarantee. The fees would be based on the quality of the mortgages, regardless of the location of the home, the volume of mortgages provided by the seller, or any reduction in homeownership costs proved to the owner.

Mortgages eligible for purchase would be for 30 years or less, be for no more than 80% of the sales price of the house (or 90% of the sales price if the seller retains a 10% participation, or the homeowner purchases private mortgage insurance). The maximum mortgage size would be based on the formula most recently used in FY2011 that provides for a \$729,750 maximum in high-cost areas.

A reorganized FHFA would oversee the facility.

Appendix. Legislative Action

Table A-1. Summary of Legislative Action

(As of July 8, 2011)

Bill	Latest House Action	Latest Senate Action
H.R. 31, Fannie Mae and Freddie Mac Accountability and Transparency for Taxpayers Act of 2011	Forwarded to full committee as amended (voice vote) to full committee, April 6, 2011.	
Companion bills H.R. 408 Title VI and S. 178 Title VI, Fannie Mae and Freddie Mac Transparency Act of 2011	H.R. 408 referred to subcommittee, March 23, 2011.	S. 178 referred to Senate Finance Committee, January 25, 2011.
H.R. 463, Fannie Mae and Freddie Mac Transparency Act of 2011	Forwarded to House Financial Services Committee, July 12, 2011	
Companion bills H.R. 1182 and S. 693, GSE Bailout Elimination and Taxpayer Protection Act	H.R. 1182 referred to subcommittee, April 4, 2011.	S. 693 referred to Senate Banking, Housing, and Urban Affairs Committee, March 31, 2011.
H.R. 1221, Equity in Government Compensation Act of 2011	Ordered reported as amended (52-4), November 15, 2011.	
H.R. 1222, GSE Subsidy Elimination Act of 2011	Forwarded to full committee (25-9), April 6, 2011.	
H.R. 1223, GSE Credit Risk Equitable Treatment Act of 2011	Forwarded to full committee as amended (34-0), April 6, 2011.	
H.R. 1224, GSE Portfolio Risk Reduction Act of 2011	Forwarded to full committee as amended (20-14), April 6, 2011.	
H.R. 1225, GSE Debt Issuance Approval Act of 2011	Forwarded to full committee as amended (18-0), April 6, 2011.	
H.R. 1226, GSE Mission Improvement Act of 2011	Forwarded to full committee as amended (voice vote), April 6, 2011.	
H.R. 1227, GSE Risk and Activities Limitation Act of 2011	Forwarded to full committee (voice vote), April 6, 2011.	
H.R. 1859, Housing Finance Reform Act of 2011	Referred to House Financial Services Committee's Subcommittee on Insurance, Housing and Community Opportunity; and Subcommittee on Capital Markets and Government Sponsored Enterprises, July 29, 2011.	
H.R. 2413, Secondary Market Facility for Residential Mortgages Act of 2011	Referred to House Financial Services Committee's Subcommittee on Insurance, Housing and Community Opportunity; and Subcommittee on Capital Markets and Government Sponsored Enterprises, July 29, 2011.	

Bill	Latest House Action	Latest Senate Action
H.R. 2425, Transparency and Security in Mortgage Registration Act of 2011	Referred to House Financial Services Committee, July 7, 2011.	
H.R. 2428, GSE Legal Fee Reduction Act of 2011	Referred to House Financial Services Committee's Subcommittee on Capital Markets and Government Sponsored Enterprises, July 11, 2011.	
H.R. H.R. 2436, Fannie Mae and Freddie Mac Taxpayer Payback Act of 2011	Forwarded to House Financial Services Committee, July 12, 2011.	
H.R. 2439, Removing GSEs Charters During Receivership Act of 2011	Forwarded to House Financial Services Committee as amended, July 12, 2011.	
H.R. 2440, Market Transparency and Taxpayer Protection Act of 2011	Forwarded to House Financial Services Committee as amended, July 12, 2011.	
H.R. 2441, Housing Trust Fund Elimination Act of 2011	Forwarded to House Financial Services Committee as amended (18-14), July 12, 2011.	
H.R. 2462, Cap the GSE Bailout Act of 2011	Forwarded to House Financial Services Committee, as amended, July 12, 2011.	

Source: CRS with information obtained from the Legislative Information System available at <http://www.congress.gov/>.

Note: House subcommittee is Subcommittee on Capital Markets and Government Sponsored Enterprises of the Committee on Financial Services. House full committee is Committee on Financial Services. Senate subcommittee (if any) has not been determined.

S. 178 and H.R. 408 (Title VI of each are concerned with Fannie Mae and Freddie Mac) are companion bills that have been introduced and referred to committee or subcommittee. H.R. 1182 and S. 693 are companion bills that have been introduced and referred to committee or subcommittee.

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